

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Criminal Action No. 99-033-2-JJF
 :
 LEROY COLEY, : Civil Action No. 03-029-JJF
 :
 Defendant. :

MEMORANDUM ORDER

Pending before the Court is an Application For A Certificate Of Appealability (D.I. 314) filed by Defendant, Leroy Coley. By his application, Defendant requests the Court to issue a certificate of appealability in connection with the Court's Memorandum Order (D.I. 312) denying his Motion For An Out Of Time Appeal.

To the extent the Court was required to consider the question of whether to issue a certificate of appealability under Third Circuit Local Appellate Rule 22.2 and 28 U.S.C. § 2253(c)(2) in connection with the Court's adjudication of Petitioner's Motion For An Out Of Time Appeal, the Court concludes that a certificate of appealability is not warranted. A certificate of appealability may only be issued when a petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner establishes a "substantial showing" by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court concluded in its Memorandum Order (D.I. 312) that it lacked jurisdiction to consider Defendant's request for an extension of time. In his present request for a certificate of appealability, Defendant reiterates his claim that his counsel provided ineffective assistance because he did not file an appeal from the Court's Amended Judgment; however, even if the Court were to consider Defendant's claim of ineffective assistance of counsel, it would be considered a second, successive 2255 motion which Defendant could not file without leave from the Court of Appeals. 28 U.S.C. § 2255.

In sum, the Court concludes that reasonable jurists would not debate the correctness of the Court's conclusion that Defendant is not entitled to relief on his Motion For An Out Of Time Appeal (D.I. 309). Accordingly, the Court declines to issue a certificate of appealability.

NOW THEREFORE, IT IS HEREBY ORDERED this ____ day of April 2006, that:

1. Defendant's Application For A Certificate Of Appealability (D.I. 314) is DENIED.

2. Defendant has not made a substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c)(2) in connection with the present application or with the Court's previously issued Memorandum Order (D.I. 312), and therefore, the Court declines to issue a certificate of appealability.

April 4, 2006


UNITED STATES DISTRICT JUDGE